IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

ARBITRATION PETITON NO. 40 OF 2004

Chandan Builders ...Petitioner

Versus

Union of India & Ors. ...
Respondents

Mr. V.P. Sawant for the Petitioner

Mr. Suresh Kumar for the Respondents.

CORAM: **DALVEER BHANDARI, C.J.**

DATE: AUGUST 12, 2005.

P.C.

1. Clause 70 of the General Conditions of Lump Sum Contract (IAFW 2159) reads as under:-

> "All disputes between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the contract expressed to be final and binding) shall, after written notice to the other of them, be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the works or termination or determination of the contract under Condition Nos.55, 56 and 57 hereof.

Provided that in the event of abandonment of the works or cancellation of the contract under Condition No. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalised by the Government to get the works completed by or through any other contractor or contractors or agency or agencies.

Provided always that commencement or continuance of any arbitration proceedings hereunder or otherwise not in any manner militate against the Government's right of recovery from the contract as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence. The arbitrator may proceed with the arbitration, ex-parte, if either party in spite of a notice from the Arbitrator fails to take part in the proceedings. The Arbitrator may, from time to time with the consent of the parties, enlarge, the time up to but not exceeding one year from the date of his entering on the reference, for making and publishing the award. The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute. The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The Award of the Arbitrator shall be final and binding on both parties to the contract."

2. The learned counsel for the parties state that according the said clause, respondent No. 2-Engineer-in-Chief (SW Dte) is the Appointing Authority.

3. I direct respondent No. 2 to appoint the Arbitrator in accordance with the said clause as expeditiously as possible, and in any event, within four weeks from the date of the receipt of the order. All contentions of the parties are kept open.

4. This petition is accordingly disposed of.

CHIEF JUSTICE